

APPEAL NO. 152240  
FILED JANUARY 20, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 8, 2015, in San Antonio, Texas, with presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does extend to a C5-6 herniated disc, a thoracic sprain/strain, a lumbar sprain/strain, and a laceration and fracture of the left 5th finger; (2) respondent 1 (claimant) has not had disability from (date of injury), and continuing through the date of the CCH; (3) the claimant has not yet reached maximum medical improvement (MMI); and (4) because the claimant has not reached MMI, there is no impairment rating (IR). The appellant (carrier) appealed, disputing the hearing officer's determination of the extent of the injury as well as the hearing officer's determinations that the claimant has not yet reached MMI and therefore there is no IR. The carrier argued that the evidence does not support the hearing officer's extent-of-injury determination and that the certification of MMI and assignment of IR by the designated doctor "should have been upheld by the hearing officer." The claimant responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

The hearing officer's determination that the claimant has not had disability from (date of injury), and continuing through the date of the CCH was not appealed and has become final pursuant to Section 410.169. However, we note the hearing officer failed to include the date of disability in dispute in the Decision portion of her decision and order. The hearing officer made a finding of fact that the claimant was not unable to obtain and retain employment at wages equivalent to his pre-injury wage as a result of the compensable injury during the period at issue. Further, the hearing officer determined in a conclusion of law that the claimant has not had disability from (date of injury), and continuing through the date of the CCH.

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record at the CCH. The appeal file contains two compact discs (CD) recording the CCH. The first CD is blank. The decision and order reflects that three witnesses testified during the CCH. The second CD begins in the middle of direct examination of a witness called to testify by the carrier and then contains closing arguments. Additional witnesses were listed as testifying, but were not on the recording. The appeal file does not contain a

transcript or a tape recording of the CCH proceeding. Consequently, we reverse and remand this case to the hearing officer who presided over the October 8, 2015, CCH, if possible, for reconstruction of the CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge